Filed 11/27/12 P. v. Dominguez CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CYNTHIA GONZALEZ DOMINGUEZ, Defendant and Appellant.	F062802 (Super. Ct. No. CF03906078) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Edward Sarkisian, Jr., Judge.

Paul Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Catherine Tennant Nieto, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Wiseman, Acting P.J., Detjen, J. and Franson, J.

Following a jury finding that appellant, Cynthia Gonzalez Dominguez, currently posed a substantial danger to others as a result of a mental disorder, the trial court extended appellant's involuntary mental health commitment under the Mentally Disordered Offender (MDO) Act (Pen. Code, § 2960 et seq.)[1] for one year. On appeal, appellant contends the evidence was insufficient to support the extension of her MDO commitment. Specifically, she argues that the evidence was insufficient to establish that she lacked the volitional capacity to control dangerous behavior. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Pre-Trial Background

In 2004, appellant was convicted of battery on medical emergency personnel (§ 243, subd. (c)(1)), and sentenced to 16 months in prison. According to a Central California Conditional Release Program (CONREP) placement recommendation report, in 2005, she "was returned to custody for violations of parole[,] which included assault with a deadly weapon, to wit an automobile ...." The report indicates appellant, in what she reported was a suicide attempt, ran a stop sign, crossed over the center line of the roadway, and crashed head-on into another vehicle. At some point thereafter, she was committed to Patton State Hospital, and thereafter released on outpatient status, but her outpatient status was revoked in June 2010.

In January 2011, the Fresno County District Attorney filed a petition for extended involuntary treatment, pursuant to section 2970. A jury trial was conducted, and concluded on June 28, 2011. The court ordered appellant's commitment extended to June 4, 2012. On October 25, 2011, the court ordered appellant placed in an outpatient program.

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[1] All statutory references are to the Penal Code.

Testimony of Dr. Jeffrey Cheng

Dr. Jeffrey Cheng, a staff psychiatrist at Patton State Hospital, testified as an expert in psychiatry.[2] He began treating appellant in December 2010.[3] He diagnosed appellant as suffering from "schizoaffective disorder, bipolar type," which, he explained, is "actually two disorders," i.e., a "psychotic spectrum disorder," and a "mood disorder." These disorders are "severe." In addition, appellant "has been diagnosed with substance abuse disorders." It was Dr. Cheng's "understanding that [appellant] suffered at the very least from cocaine dependence."

It was also Dr. Cheng's understanding that "around December," appellant was "intermittently compliant" with one of her medications, and "there [were] ongoing issues of paranoia, suspiciousness." Appellant refused to take one of the medications Dr. Cheng prescribed for appellant, and it was his understanding that in January 2011 she "started to refuse the medication altogether." "[A]t that time," the hospital "changed [appellant's] medications involuntarily," and she "improved" and her "compliance became … very good."

On December 20, "[t]here was an incident … in which reportedly [appellant] was chasing a female staff member" while under the "paranoid delusion" that "the staff member smelled of her baby's blood," and appellant "was placed in five-point restraints, given medication." On December 31, appellant reportedly "punched a staff member in the chest."

Dr. Cheng opined: "[B]ecause of her severe mental disorder ... [appellant] represents a substantial danger of physical harm to others[.]" Dr. Cheng based this opinion on appellant's "history of violence," "poor compliance" with her medication regimen, her "personality disorder," and her "substance abuse disorder."

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2 Information in this section is taken entirely from Dr. Cheng's testimony.

3 All references to December are to December 2010.

Asked if "schizoaffective disorder necessarily mean[s] a person can't control [himself] or herself," Dr. Cheng responded: "[O]ther conditions ... would be something that should be taken into account. So ... for instance, someone suffers from a substance abuse disorder, and the substance abuse disorder is not necessarily well controlled, even if the disease itself is well controlled, and say somebody else starts drinking, they drink, and they're drunk all the time and forget to take their medication, and then things could get much worse; or someone suffers from a personality disorder." "[F]or instance, someone on the treatment team is interpreted as being insulting to that person, they might try to refuse their medication just to attempt to passively/aggressively get back at that person." The following exchange then occurred:

> "Q. Is that a deliberate behavior or is that a lack of control that you're talking about there?
>
> "A. I'm not sure if I can give you a straight answer on that because we're talking about personality.
>
> "Q. Generally it's a personality disorder that that person is doing something passive aggressively, that's a deliberate intentional behavior?
>
> "A. Arguably you could say that that was a deliberate behavior.
>
> "[¶] ... [¶]
>
> "Q. That doesn't sound like a person whose behavior is beyond his own control?
>
> "A. (Pause) yes."

At the time of trial, appellant was "doing extremely well," and in the five months preceding the trial had not "exhibited any signs of psychotic behavior." "As she is right now," i.e., at the time of trial, appellant can "choose whether to commit acts of violence," she can "choose to refrain from acts of violence," and she can "choose whether she wants to take her medications," provided that "her mental illness in under control at the time ...."

"Given [appellant's] present [mental] status, … she would choose to take her medications," and she would seek treatment if she was aware she needed it. There was "no doubt" that if appellant was released immediately, she would continue to take her medications for the next 30 days. Nonetheless, she "poses a substantial danger to others" because: "By nature of [appellant's] illness, and ... let's just take the schizoaffective disorder. For both of those diseases, people often have limited insight and judgment when symptoms are exacerbated, when symptoms get worse." Appellant was "intermittently compliant with medication in December, so she was taking medication, but only part of the time, and she was still extremely symptomatic at that time."

A hypothetical situation was posited in which, among other things, appellant was released from the hospital, she was taking her medication under a regimen that "worked for her," she was seeing a psychiatrist for regular treatment, and she was receiving emotional support from family members. Dr. Cheng was asked if, under these circumstances, he "would ... still ... conclude ... that [appellant] has serious difficulty controlling dangerous behavior because of a mental disorder?" He responded, "She represents a potential for uncontrolled behavior because of her mental disorder." He based that conclusion on appellant's "prior behavior" and on the unavailability, "in the community," of "interventions" such as those that were required in December when "multiple hospital personnel" were required to place appellant in restraints. At that time, "[appellant's] symptoms were so bad," and "she did not recognize at the time as being necessarily symptoms."

Appellant is at "low risk of violent behavior right now," because "she's in the hospital taking her medication, without outside stressors and without access to drugs or alcohol[.]" A schizophrenic person can "exhibit new symptoms" and "that decompensation can cause a downward spiral where [such person is] non compliant with [his or her] medication."

Testimony of Vincent Ramirez

Vincent Ramirez testified he is the "program clinician" for CONREP.[4] He became appellant's CONREP social worker in late 2008.

In early 2010, at a time when appellant was pregnant and released on CONREP, she had stopped taking her medication on the advice of her obstetrician. At that time, "Her symptoms began to emerge" and she displayed "an increase in ... her paranoia, her mood swings, her anger." On one occasion she "had grabbed a computer monitor and thrown it." Her conduct at this time led to the revocation of her CONREP status. Ramirez opined that "the removal of the medication contributed to" the worsening of her symptoms.

Appellant had been "doing well in the hospital" since her medication regimen was changed in January 2011, and she had been taking her medications. "[S]he's able to make rational decisions about how to behave in a way that would be in her best interests[.]" This indicates "she's making progress in her treatment." However, Ramirez opined, appellant would not "maintain her current stability" if she was released from the hospital and not under the supervision of CONREP. Appellant "has a severe and persistent mental illness that is life long." When she was previously released on CONREP, "there [were] instances where she forgot to take her meds or the prescription bottles weren't filled," and "she really didn't attend ... meetings" of Alcoholics Anonymous and Narcotics Anonymous. "[I]t was very difficult to get her motivated or to participate in the meetings ...." Even with strong family support, "there's a lot that the family can't do for her ...." Moreover, mentally ill people "will sometimes decompensate while they're taking meds ... because ... a lot of the times stressors are brought in that they can't cope with ...."

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4 Information in this section is taken entirely from Ramirez's testimony.

Testimony of Mark Duarte

Mark Duarte testified he is the "community program director" of CONREP.[5] He conducted a "risk assessment" of appellant. Asked if appellant "would present a substantial risk of serious physical harm to others if she were released unsupervised by CONREP," Duarte responded, "I can only answer possibly." He also opined: "If she were in the community now, without [CONREP] supervision, she probably wouldn't follow her regimen, she would decompensate and become a danger." "[T]reatment supervision" under CONREP consists of, among other things, helping a person make, remember and keep medical appointments. "Without that, she would forget or get distracted and just miss the appointment, miss taking the medications." Appellant "does very well with supervision, but ... anybody can choose not to comply."

Duarte was asked, "Insofar as [appellant] had problems [while released on the CONREP program], was ... her issue choosing not to comply or was it inability to control herself that led to non compliance?" He responded, "[I]t's hard to tell, but I believe there was a failure, which may have been willful or may have been inadvertent, to take -- or not take medication when it was scheduled, and that might have predisposed her to … [experience] an upsurge of her psychotic symptoms ...."

DISCUSSION

As indicated above, appellant contends the recommitment order must be reversed because "substantial evidence is lacking to support the required finding that [she] lacked the volitional capacity to control dangerous behavior." (Emphasis and unnecessary capitalization omitted.) We disagree.

Applicable Legal Principles

"The MDO law is a civil commitment scheme targeting state prisoners with severe mental disorders who are about to be released.... Once a prisoner has been certified as an

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[5] Information in this section is taken entirely from Duarte's testimony.

MDO, inpatient treatment under the supervision of [the State Department of Mental Health (DMH)] is usually required unless DMH certifies that the prisoner can be treated in an outpatient program." (*People v. Martin* (2005) 127 Cal.App.4th 970, 973.) "[T]he purpose of the scheme is to provide MDO's with treatment while at the same time protecting the general public from the danger to society posed by an offender with a mental disorder." (*In re Qawi* (2004) 32 Cal.4th 1, 9.)

"Commitment as an MDO is not indefinite; instead, '[a]n MDO is committed for ... one-year period[s] and thereafter has the right to be released unless the People prove beyond a reasonable doubt that he or she should be recommitted for another year.' [Citation.]" (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1063.) A recommitment "requires proof beyond a reasonable doubt that (1) the patient has a severe mental disorder; (2) the disorder 'is not in remission or cannot be kept in remission without treatment'; and (3) by reason of that disorder, the patient represents a substantial danger of physical harm to others." (*People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1404.)

However, "'A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary commitment.'" (*In re Howard N.* (2005) 35 Cal.4th 117, 128, quoting *Kansas v. Hendricks* (1997) 521 U.S. 346, 358.) "[T]he safeguards of personal liberty embodied in the due process guaranty of the federal Constitution prohibit the involuntary confinement of persons on the basis that they are dangerously disordered without 'proof [that they have] serious difficulty in controlling [their dangerous] behavior.' [Citation.]" (*People v. Williams* (2003) 31 Cal.4th 757, 759 (*Williams*), quoting *Kansas v. Crane* (2002) 534 U.S. 407, 413 (*Crane*).)

"The United States Supreme Court has made it abundantly clear that the distinction between dangerous sexual offenders subject to civil commitment and other dangerous persons who are more properly dealt with through criminal proceedings is constitutionally 'necessary lest "civil commitment" become a "mechanism for retribution

or general deterrence"—functions properly those of criminal law, not civil commitment. [Citations.] The presence of what the "psychiatric profession itself classified ... as a serious mental disorder" helped to make that distinction in *Hendricks[*, supra, 521 U.S. 346]. And a critical distinguishing feature of that "serious ... disorder" there consisted of a special and serious lack of ability to control behavior. [¶] In recognizing that fact, [*the United States Supreme Court*] did not give to the phrase "lack of control" a particularly narrow or technical meaning. And [*the high court*] recognize[*d*] that in cases where lack of control is at issue, "inability to control behavior" will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior.'"[6] (*In re Anthony C.* (2006) 138 Cal.App.4th 1493, 1504 (*Anthony C.*), quoting *Crane, supra*, 534 U.S. at pp. 412-413.)

The People are not required to prove that a defendant "'is completely unable to control his [or her] behavior.'" (*Williams, supra,* 31 Cal.4th at p. 771, quoting *Crane, supra*, 534 U.S. at p. 411.) Instead, a defendant's "impairment need only be serious, not absolute." (*Williams,* at p. 773.)

"In reviewing the sufficiency of the evidence in a civil commitment case, we apply the substantial evidence standard of review. [Citation.] The question to be determined is whether, on the whole record, there is substantial evidence from which a rational trier of fact could have found each essential element beyond a reasonable doubt. [Citations.] We must consider all the evidence in the light most favorable to the People, drawing all inferences the trier could reasonably have made to support the finding. [Citation.]" (*Anthony C., supra*, 138 Cal.App.4th at p. 1503.)

Analysis

Appellant contends, "There was no testimony that [she] lacked the volitional capacity to control dangerous behavior." She asserts "her behavior was consistently

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6 Insertions added by this court are placed in brackets and italicized to distinguish them from the single bracketed insertion appearing in the original material.

described as 'intentional' and 'deliberate,'" and points to evidence such as Dr. Cheng's testimony, when asked if refusing medication in an "attempt to passively/aggressively get back at" a hospital staff member would be "a deliberate behavior or lack of control," that such refusal was "[a]rguably ... a deliberate behavior"; his testimony that "As she is right now," he "believe[d]" appellant can "freely choose her behavior"; and Mark Duarte's testimony that appellant "does very well with supervision, but like anything else, anybody can choose not to comply." Other evidence, however, leads us to reject appellant's claim. Specifically, we note the following.

First, there was evidence that appellant, while hospitalized in December, was in only intermittent compliance with her medication regimen; that during this time the symptoms of her mental illness increased; and on one occasion in December, while in the grip of a paranoid delusion, she chased after a female staff member, and had to be placed in restraints and given medication. Second, Mark Duarte opined that the removal of appellant's medication in early 2010 contributed to the worsening of her symptoms at that time, and Dr. Cheng opined that appellant's intermittent compliance with her medication regimen was one of the factors upon which he based his conclusion that appellant posed a danger to others if released. Third, there was ample evidence that although appellant was doing well while confined in the hospital, it was likely that if she was released without CONREP supervision she would stop taking her medication, that even if she did take her medication, the "stressors" present in an unsupervised environment would overwhelm her, and that either of these factors could lead to decompensation. Fourth, Dr. Cheng testified that appellant had the ability to choose not to commit acts of violence *provided that* "her mental illness is under control at that time ...."

From this evidence the jury reasonably could conclude that if appellant was released from the hospital, she would experience a worsening of the symptoms of her mental disorder(s) to the point that her ability to control her behavior would be so

compromised that she would engage in violent acts that could only be stopped by the application of physical force. The necessity of the application of physical force to control appellant's violent conduct in December when she chased after a hospital staff member supports the conclusion that at that point she was "suffer[ing] from a mental illness or abnormality causing volitional impairment" (*Anthony C.*, *supra*, 138 Cal.App.4th at p. 1504). (See *Williams*, *supra*, 31 Cal.4th at p. 760 [civil commitment under Sexually Violent Predators Act upheld based, in part, on evidence that while the defendant was in process of committing a rape, police officers arrived on scene and had to physically remove him from victim].) On this record, therefore, the jury could reasonably conclude further that by reason of appellant's mental illness, she had "serious difficulty in controlling [her] behavior" (*Crane*, *supra*, 534 U.S. at p. 413).

DISPOSITION

The judgment is affirmed.